

Westwood One Broadcasting Services, Inc. d/b/a Shadow Broadcast Services and Writers Guild of America, East, AFL-CIO, on Behalf of Itself and Its Affiliate, Writers Guild of America, West, Inc. Case 22-CA-21829

June 16, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

Pursuant to a charge filed on January 29, 1997,¹ the General Counsel of the National Labor Relations Board issued a first amended complaint on March 21, 1997,² alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 22-RC-11274.³ (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and submitting affirmative defenses.

On April 24, 1997, the General Counsel filed a Motion for Summary Judgment. On April 25, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 20, 1997, the Respondent filed a response, and on May 30, 1997, the General Counsel filed a reply to the Respondent's response.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its contentions in the representation proceeding that the unit is inappropriate and that alleged supervisory involvement in the union campaign tainted the Union's showing of interest. In addition, the Respondent contends that granting the

General Counsel's motion would result in a denial of due process because the Regional Director is currently investigating related unfair labor practice charges against the Union and the Respondent.

It is well established that, in the absence of newly discovered evidence or other special circumstances requiring reexamination of the decision in the representation proceeding, a respondent is not entitled to relitigate in a subsequent refusal-to-bargain proceeding representation issues that were or could have been litigated in the prior representation proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Here, the Respondent has not offered to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine its decision regarding the Respondent's objections in the representation proceeding. In the underlying representation case, the Board denied the Respondent's request for review of the Regional Director's Decision and Direction of Election, specifically noting that the Employer refused to state a basis for rebutting the presumptive appropriateness of the unit. We therefore find that the Respondent's denial in this regard does not raise any issue warranting a hearing in this proceeding.

With respect to the Respondent's allegations of alleged supervisory involvement in the Union's campaign and in the Union's obtaining its "showing of interest," we note that the Respondent specifically raised this issue in its objections. The Regional Director found that the same individuals who are alleged to have tainted the Union's showing of interest are not statutory supervisors or managerial employees, and the Board denied review.

Finally, with respect to the Respondent's argument that the General Counsel's Motion for Summary Judgment in the instant case should be denied because of pending unfair labor practice cases, we note that the Respondent made a similar contention in the representation proceeding. The Regional Director rejected the contention and declined to defer the matter pending resolution of the unfair labor practices, finding that the Respondent's "failure to present evidence in support of its position that these individuals are supervisors or managers, cannot be redeemed by an attempt to utilize alternative proceedings—collateral unfair labor practice cases in which the Employer again attempts to raise the same issues." Again, as indicated, the Board denied the Respondent's request for review.

Accordingly, we grant the Motion for Summary Judgment.⁴

⁴ Member Fox notes that she did not participate in the Board's Order denying the Respondent's request for review of the Regional Director's Supplemental Decision on Objections. However, she

¹ Although the Respondent's answer to the first amended complaint denies having knowledge or information to form a belief as to when the charge was filed and served, a copy of the charge and an affidavit of service of the charge are attached to the General Counsel's motion and the Respondent has not challenged the authenticity of those documents.

² We grant the Respondent's request that the Board take administrative notice of the original complaint dated February 21, 1997, and the Respondent's answer dated March 10, 1997.

³ In its answer and response to the notice to show cause, the Respondent denies that the Union was certified. Although the Regional Director's Supplemental Decision on Objections and Certification of Representative inadvertently omitted the actual "certification," the intent of the document is clear and the lack of the actual "certification" did not prejudice the Respondent in any way. Furthermore, as indicated in the attachments to the General Counsel's motion, the Respondent in its letter of January 31, 1997, informed the Union that it would establish that the Union's NLRB certification is tainted.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with offices and places of business in Rutherford and Woodbridge, New Jersey,⁵ and Melville, New York, is engaged in providing broadcast services. Based on a projection of its operations since March 1, 1996, at which time the Respondent commenced its operations, the Respondent will annually derive gross revenues in excess of \$100,000. During the period described above, the Respondent, in conducting its business operations described above, provided goods valued in excess of \$50,000 directly to customers located outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held from October 29 through November 1, 1996, the Union was certified on December 2, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time traffic, weather, sports, news and road operations department employees including desk assistants/producers in training, desk assistants, producers in training, associate producers, production assistants, producers, writers, writers/producers, executive producers, producers/executive producers and bureau chiefs employed by the Respondent at its Rutherford, New Jersey, Woodbridge, New Jersey and Melville, New York locations, excluding office clerical employees, department heads, managers, guards and all other supervisors as defined by the Act. The Union continues to be the exclusive representative under Section 9(a) of the Act.

agrees with her colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing.

⁵ In its answer, the Respondent states that it does not maintain an office or place of business in Woodbridge, New Jersey. However, in the representation proceeding, the Respondent at no time argued that it did not maintain a facility in Woodbridge, New Jersey, and the election directed by the Regional Director included employees at that facility. Further, as the Respondent notes in its response, the Union has filed an unfair labor practice charge alleging 8(a)(1), (3), (4), and (5) violations with respect to the alleged December 2, 1996 relocation of its Woodbridge facility.

B. Refusal to Bargain

About December 5, 1996, and January 24, 1997, the Union requested the Respondent to bargain, and, since December 18, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after December 5, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Westwood One Broadcasting Services, Inc. d/b/a Shadow Broadcast Services, Rutherford and Woodbridge, New Jersey, and Melville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Writers Guild of America, East, AFL-CIO on behalf of itself and its affiliate, Writers Guild of America, West, Inc. as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time traffic, weather, sports, news and road operations department employees including desk assistants/producers in training, desk assistants, producers in training, associate producers, production assistants, producers, writers, writers/producers, executive producers, producers/executive producers and bureau chiefs employed by the Respondent at its Rutherford and Woodbridge, New Jersey and Melville, New York locations, excluding office clerical employees, department heads, managers, guards and all other supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facilities in Rutherford and Woodbridge, New Jersey, and Melville, New York, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 22 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 29, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

⁶If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Writers Guild of America, East, AFL-CIO on behalf of itself and its affiliate, Writers Guild of America, West, Inc. as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time traffic, weather, sports, news and road operations department employees including desk assistants/producers in training, desk assistants, producers in training, associate producers, production assistants, producers, writers, writers/producers, executive producers, producers/executive producers and bureau chiefs employed us at our Rutherford and Woodbridge, New Jersey and Melville, New York locations, excluding office clerical employees, department heads, managers, guards and all other supervisors as defined by the Act.

WESTWOOD ONE BROADCASTING SERVICES, INC. D/B/A SHADOW BROADCAST SERVICES